IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

WP(C).No. 26543 of 2006(I)

OS.1710/2005 of ADDL.M.C.,IRINJALAKUDA
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PETITIONER:

PULLUR SERVICE CO-OPERTIVE BANK LTD.
NO.550, PULLUR P.O., THRISSUR-3,
REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.P.V.SURENDRANATH

RESPONDENTS:
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1. CORNATION CURIES (P) LTD.,
IRINJALAKUDA, REPRESENTED BY ITS
MANAGING DIRECTOR, SAJU GEORGE.

2. BABU,
S/O.KUNDIL AYYAPPAN,
KUNDIL, PULOOR, MUKUNAPURAM,
TRISSU DISTRICT.

3. JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL) THRISSUR,
OFFICE OF JOINT REGISTRAR (GENERAL) TRISSUR.

BY ADV. SRI.V.RAMKUMAR NAMBIAR
SRI.GEORGE VARGHESE (MANACHIRACKEL)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/11/2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

Ext.P1:- True copy of the attachment order before the judgment passed by the Joint Registrar dated 20.5.2006.

Ext.P2:- A true copy of the I.A.No.2439/2005 in O.S.1710/2005 along with the affidavit attached to the I.A.

Ext.P3:- A true copy of the objection submitted by the petitioner as 2nd respondent in Ext.P2 I.A.

Ext.P4:- A true copy of the I.A. With accompanying affidavit made by petitioner.

Ext.P5:- A true copy of the order of the Addl.Munsiff Irinjalakuda dated 12.6.2006 in I.A.2439/05 in O.S.1710/05.

Ext.P6:- A true copy of the order of attachment dated 27.6.2006.

Ext.P7:- A true copy of the plaint in O.S.1710/2005 before the Munsiff Court, Irinjalakuda.

Ext.P8:- A true copy of the affidavit and petition in I.A.680/2006 along with docket order of the court allowing the amendment.

Ext.P9:- A true copy of the judgment in O.S.1710/2005 dated 20.7.2006.

M.SASIDHARAN NAMBIAR,J.

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W.P.(C) NO.26543 OF 2006

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Dated this the 29th day of November,2006

JUDGMENT

First respondent is the plaintiff and second respondent the defendant in O.S.1710/05 on the file of Munsiff Court, Irinjalakuda. The suit was filed for realisation of the amount due from second respondent under a kuri transaction. In the suit, first respondent filed Ext.P2 application for a direction to petitioner Co-operative Bank, a third party to the suit to produce the fixed deposit receipt made by second respondent where a lien in favour of first respondent was noted, contending that first respondent is entitled to get that amount by virtue of the lien. The trial court issued notice to the petitioner. Petitioner filed Ext.P3 objection contending that as per the transaction between the petitioner and second respondent Rs.1,94,338/- with interest at 13% is due from second respondent to the petitioner and

for realisation of the same, suit ARCM 6926/04 has already been preferred before Assistant Registrar, Mukundapuram Co-operative Sangam and under section 171 of the Contract Act and Section 38 of Co-operative Societies Act, petitioner is entitled to realise the amount due from the Fixed Deposit and the petition is filed in collusion between the respondents. Court below did not conduct an enquiry in that application. Ext.P3 objection was filed on 6.2.06. Petitioner produced Ext.P1 order of the Joint Registrar of Co-operative Societies in ARC 6926/04 dated 20.5.06, whereunder an order of attachment of the Fixed Deposit, which is sought to be produced under Ext.P2 application was passed. Eventhough Ext.P1 was produced along with Ext.P4 application, it was also not considered by the learned Munsiff. No order was also passed in Ext.P2. Finally second respondent withdrew the contentions in the suit. As a result, as per Ext.P9 judgment a decree was granted for realisation of Rs.21,724/-as claimed in the plaint.

2. Ext.P9 decree provides that first respondent is entitled to a charge over the fixed deposit amount, which was sought to be produced as per Ext.P2 application. This petition is filed under Article 227 of the Constitution of India contending that Ext.P5, P6 and P9 are to be quashed as the objection raised by the petitioner and the order of attachment passed by the Joint Registrar under Ext.P1 were not at all considered by the court below.

3. Learned counsel appearing for petitioner and respondents were heard.

4. As is clear from the facts narrated earlier, suit was filed by first respondent against second respondent for realisation of the amount under a transaction contending that there is a lien over the fixed deposit made by second respondent before petitioner society. First respondent filed Ext.P2 application, for a direction to the petitioner to produce the Fixed Deposit receipt before the court. In answer to the notice served,

petitioner filed Ext.P3 objection contending that more than Rs.1,90,000/- is due by second respondent to the petitioner and as per the provisions of the Contract Act and the Co-operative societies Act, petitioner society has a right to realise the amount from the Fixed Deposit made by second respondent. It was also contended that to realise that amount petitioner has already filed a suit before the Joint Registrar of Co-operative Societies. Though there was no order of attachment at that time, before Ext.P9 judgment was passed, petitioner produced Ext.P1 order of attachment before the trial court. Unfortunately when the decree was granted, when second respondent withdrew his contentions, learned Munsiff did not consider the objections raised by petitioner and granted a charge over the fixed deposit under Ext.P9 judgment.

5. As rightly pointed out by learned counsel appearing for petitioner, the trial court should not have granted a charge over the fixed deposit

amount made by second respondent, without deciding the claim raised by petitioner and that too when Ext.P1 order of attachment was produced. Admittedly there was no order of attachment of the fixed deposit amount, for which a charge was created under Ext.P9 judgment at the trial stages. The case of first respondent was that there is already a lien recorded in the fixed deposit receipt and therefore first respondent is entitled to get a charge. At the same time, the claim of the petitioner was that because of the provisions of the Contract Act and the Co-operative Societies Act and also by virtue of Ext.P1 order of attachment first respondent cannot claim any right over and above the right of petitioner. Learned Munsiff did not consider this question at all. In such circumstances, learned Munsiff is directed to consider the claim of the petitioner and decide whether in the light of the contentions raised by petitioner, supported by Ext.P1, first respondent is entitled to the charge as granted under Ext.P9.

It is made clear that charge provided under Ext.P9 could be enforced only if the claim of the petitioner is negatived after proper enquiry. It is further made clear that the decree to the limited extent of charge over the fixed deposit shall not be executed, before deciding the claim of the petitioner as against the fixed deposit.

Writ Petition is disposed as above.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006